



Control Number: 44291



Item Number: 6

Addendum StartPage: 0

House Bill (HB) 1600 and Senate Bill (SB) 567 83rd
Legislature, Regular Session, transferred the functions
relating to the economic regulation of water and sewer
utilities from the TCEQ to the PUC effective
September 1, 2014

SOAH DOCKET NO. 582-12-6658
TCEQ DOCKET NO. 2012-1058-UCR

APPLICATION OF AQUA TEXAS, § BEFORE THE STATE OFFICE
INC., AQUA UTILITIES, INC., AQUA §
DEVELOPMENT, INC., HARPER §
WATER COMPANY, INC., AND §
KERRVILLE SOUTH WATER § OF
COMPANY, INC., DBA AQUA TEXAS §
FOR NORTH AND SOUTHWEST §
REGION WATER RATE/TARIFF §
CHANGES § ADMINISTRATIVE HEARINGS

AQUA TEXAS' MOTION FOR PROCEDURAL RELIEF

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

COMES NOW, Aqua Texas, Inc., Aqua Utilities, Inc., Aqua Development, Inc., Harper Water Company, Inc. and Kerrville South Water Company, Inc. d/b/a Aqua Texas ("Aqua Texas") and requests the Court grant this Motion for Procedural Relief pursuant to 30 TEX. ADMIN. CODE §80.31 and 1 TEX. ADMIN. CODE §155.305. In support thereof, Aqua Texas would show as follows.

1. Aqua Texas has learned that there is a small group of Aqua Texas water ratepayers who must be afforded an opportunity to participate in the environs TCEQ water rate/tariff change matter currently pending before the Court.

2. On July 16, 2012, the Court held a preliminary hearing in this matter and designated parties as set forth in Order No. 1.

3. The Water Code provides that original ratemaking jurisdiction lies with each municipality as to utility ratepayers within that municipality's corporate limits. TEX. WATER CODE §13.042. Consequently, Aqua Texas filed the North/Southwest Region water rate/tariff change application at issue in this case with both TCEQ and several municipalities, including the Town of Lakewood Village in Denton County, Texas (the "Town").

4. Aqua Texas serves approximately 29 customers utilizing its Spanish Oaks Addition water system (PWS ID No. 0610214) in the vicinity of the Town. At the time Aqua Texas filed its water rate/tariff change application, Aqua Texas believed these customers had connections located within the Town's corporate limits.

5. Since the preliminary hearing in this docket, Aqua Texas has learned that no Spanish Oaks Addition water system customer connections are located within the Town's corporate limits. According to the Town, an area Aqua Texas believed was within the Town's corporate limits that is immediately adjacent to the Town limits was de-annexed.

6. Earlier this year, the Town issued ordinances suspending and then denying Aqua Texas' water rate/tariff change application without any indication that no Aqua Texas connections are in the Town. *See Exhibits A and B.* In response, Aqua Texas filed an appeal with TCEQ. After the appeal and July 16, 2012 preliminary hearing for the environs rate case, Aqua Texas and the Town conferred, compared Aqua Texas' water connection locations with a map of the Town limits, and determined that there are no Aqua Texas connections inside the Town limits.

7. Spanish Oaks Addition water system ratepayers received the same notice as other Aqua Texas North Region customers regarding its water rate/tariff change application filing in December 2011. ED Exhibit A. Aqua Texas has reviewed that notice and there is no issue that requires resolution with respect to Spanish Oaks Addition water system ratepayers related to that notice. Moreover, the current contested case hearing was referred to SOAH based on other protests filed with TCEQ in response to the rate notice.

8. In contrast, Aqua Texas limited its notice of the July 16, 2012 preliminary hearing to ratepayers subject to the original jurisdiction of TCEQ and affected by this proceeding — the environs customers. Aqua Texas did not provide any hearing notice to its ratepayers located within

the corporate limits of municipalities because TCEQ's appellate jurisdiction authority over those utility rate matters dictate application of a different process before an in-city utility rate application may be considered in a SOAH hearing. TEX. WATER CODE §§ 13.042 and 13.043. As it turns out, Aqua Texas' rates charged to Spanish Oaks Addition water customers will be determined as part of the environs case at bar, and not by the Town. Therefore, those ratepayers should be provided the opportunity to participate in this contested case hearing, if desired.

9. The other issue that must be resolved is the fact that Aqua Texas has not charged the Spanish Oaks Addition water system customers its proposed North Region water rates as applied for because it believed that rates for those customers were suspended — and then denied — by the Town in response to Aqua Texas' rate notice and Town rate filing. Aqua Texas was actually entitled to charge those customers its proposed North Region water rates effective February 21, 2012.

10. It is Aqua Texas' understanding that the Town has not received any protests from Spanish Oaks Addition water system ratepayers and Aqua Texas does not want to delay the contested case hearing in this matter unnecessarily. However, the circumstances presented indicate that the two procedural issues described above require some sort of reasonable resolution.

11. Aqua Texas has conferred with the ED about this issue and the ED is unopposed to the following Aqua Texas proposal. Respectfully, Aqua Texas requests that the Court issue an Order that Aqua Texas can mail to affected Spanish Oaks Addition water ratepayers with the following authorizations: (1) Spanish Oaks Addition water system ratepayers in Denton County, Texas, may participate in this contested case hearing by informing the Court of their desire for party status within 30 days of the date Aqua Texas mails them the Order; (2) if affected Spanish Oaks Addition water system ratepayers request party status in this contested case hearing, the ALJs will align them with the North Region Group, represented by Rick Guzman, Attorney for Blue Water Shores POA; and

(3) Aqua Texas may implement its proposed rates included in its December 2011 water rate/tariff change application notice ("ED Exhibit A") for Spanish Oaks Addition water system ratepayers effective 60 days from the date Aqua Texas mails the Order.

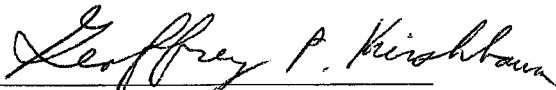
12. The requested procedural relief will balance the interests of both Aqua Texas and affected ratepayers without unnecessarily delaying the contested case hearing already in progress.

PRAYER

For the forgoing reasons, Aqua Texas respectfully requests the Court grant this Motion for Procedural Relief and issue an Order reflecting same.

Respectfully submitted,

THE TERRILL FIRM, P.C.

By: 

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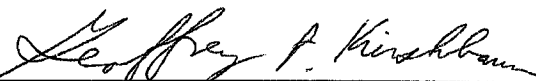
**ATTORNEYS FOR AQUA TEXAS, INC., AQUA
UTILITIES, INC., AQUA DEVELOPMENT, INC.,
HARPER WATER COMPANY, INC., KERRVILLE
SOUTH WATER COMPANY, INC.**

CERTIFICATE OF SERVICE

I hereby certify that on August 9, 2012, a true and complete copy of the foregoing was sent to the following by facsimile, overnight delivery, or by first class mail:

Parties	Representative / Address	Phone
STATE OFFICE ADMINISTRATIVE HEARINGS	Kerrie Qualtrough William Newchurch Administrative Law Judges State Office of Admin. Hearings 300 West 15th Street Suite 502 Austin, TX 78701	Tel: 475-4993 Fax: 322-2061
SOAH Docket Clerk	Docket Clerk State Office of Admin. Hearings 300 West 15th Street, Suite 502 Austin, TX 78701	Fax: 322-2061
TCEQ Chief Clerk	Office of the Chief Clerk, TCEQ 12100 Park 35 Circle Bldg. F/1, Room 1104 Austin, Texas 78753	Fax: 239-3311
TCEQ Executive Director	Ross Henderson Dinniah Tadema Executive Director, TCEQ MC-175 P.O. Box 13087 Austin, TX 78711-3087	Tel: 239-6257 Fax: 239-0606 ross.henderson@tceq.texas.gov dinniah.tadema@tceq.texas.gov

Parties	Representative / Address	Phone
Office of Public Interest Counsel of TCEQ	Amy Swanholm TCEQ, OPIC MC-103 P.O. Box 13087 Austin, TX 78711-3087	Tel: 239-6363 Fax: 239-6377 amy.swanholm@tceq.texas.gov
Recently Acquired Water System Group	John Quest Canyon Springs Resort POA 833 Hillside Loop Canyon Lake, TX 78133	Tel: (830)214-4454 Fax: (830)899-8555 jq@gvtc.com
SW Region Existing Water Systems Group	Jay Yount 206 Cherry Falls Comfort, TX 78013	Tel: (830) 995-5844 eyou42@hotmail.com
North Region Group	Rick Guzman 2201 Double Creek 1 #5001 Round Rock, TX 78664	Tel: (512)388-7800 Fax: (512)388-7801 rguzmand@rickguzmanlaw.com
Hill Country Group	Larry Westfall Kerrville South CAG 450 Rim Rock Rd Kerrville, TX 78028	Tel:(830)792-5506 Fax:(830)792-5510 lgwestfall@aol.com



 Geoffrey P. Kirshbaum



STATE OF TEXAS)
)
COUNTY OF DENTON)

CERTIFICATE TO COPY OF PUBLIC RECORD

I hereby certify, in the performance of the functions of my office, that the attached instruments are full, true and correct copies of the Town of Lakewood Village Ordinance 12-02 adopted January 19, 2012. The same appear of record in my office and said documents are the official records from the public office of the Town Secretary of the Town of Lakewood Village, Denton County, Texas, and are kept in said office.

I further certify that I am the Town Secretary of the Town of Lakewood Village, that I have legal custody of said records, and that I am a lawful possessor and keeper of the records in said office.

In witness whereof I have hereunto set my hand and affixed the official seal of The Town of Lakewood Village this 20th day of January, 2012.



Linda Asbell

Linda Asbell, Town Secretary
Town of Lakewood Village
Denton County
State of Texas

TOWN OF LAKEWOOD VILLAGE

ORDINANCE NO. 12-02

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LAKEWOOD VILLAGE, TEXAS RELATING TO THE APPLICATION OF AQUA TEXAS, INC. FOR A CHANGE TO ITS WATER RATES/TARIFF WITHIN THE TOWN LIMITS AND ETJ OF LAKEWOOD VILLAGE, TEXAS; SUSPENDING FOR NINETY (90) DAYS THE EFFECTIVE DATE OF THE NEW RATES; MAINTAINING CURRENT RATES IN EFFECT; CONTAINING FINDINGS AND OTHER PROVISIONS RELATING TO THE FOREGOING SUBJECT; PROVIDING FOR SEVERABILITY; REPEALING CONFLICTING ORDINANCES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on December, 22, 2011, Aqua Texas, Inc (“Applicant”) filed a Water Rate/Tariff and Application for Authority to Change Rates (“New Rates”) within the town limits and ETJ of Lakewood Village, Texas (“Town”) seeking water rate increases;

WHEREAS, the New Rates would affect rates, operations or services of Applicant for retail customers within the Town and ETJ;

WHEREAS, the Town, as a local regulatory authority, exercises original jurisdiction over the rates, operations, and services of Applicant for customers located within the corporate limits of the Town pursuant to the Texas Water Code (“Code”);

WHEREAS, Code § 13.082 requires a local regulatory authority to make a reasonable determination of rate base, expenses, investment, and rate of return, and to retain the necessary personnel to determine reasonable rates;

WHEREAS, Code § 13.187 provides that the New Rates take effect on the 61st day after the local filing, unless the local regulatory suspends the effective date of the New Rates;

WHEREAS, Code § 13.187 (d-1) further provides that a local regulatory authority may suspend the operation of the New Rates for ninety (90) days beyond the effective date of the New Rates (“Suspension Period”);

WHEREAS, the Code further provides that unless the local regulatory authority establishes interim rates, the rates in effect at the time the New Rates are filed remain in effect during the Suspension Period;

WHEREAS, the Town requires the additional time in order to review, analyze, and investigate the Applicant’s rate increase request;

WHEREAS, during the Suspension Period, the Town, either independently or through consultants retained, will perform an analysis of the New Rates, obtain additional information from Applicant, and prepare a rate recommendation to be considered by the Town Council;

WHEREAS, the Town may provide an opportunity for public comment on the subject of the New Rates as well as customer service concerns;

WHEREAS, the rate ordinance recommendation to Town Council will take public concerns into consideration;

WHEREAS, the rate analysis and Town Council consideration will extend beyond the effective date of the New Rates; and

WHEREAS, the Town Council has determined that it is in the best interests of the Applicant's rate payers within the Town to allow for a rate analysis by suspending the New Rates for ninety (90) days beyond the effective date of the New Rates.

NOW THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF LAKEWOOD VILLAGE, TEXAS:

SECTION 1. The recitals contained in the preamble of this ordinance are determined to be true and correct and are hereby adopted as a part of this ordinance.

SECTION 2. To allow for a rate analysis and possible public comment, the effective date of the New Rates filed by Aqua Texas. is hereby suspended for ninety (90) days.


SECTION 3. The Town Secretary shall give notice of this Ordinance to the Applicant by mail.

SECTION 4. It is hereby declared that the sections, paragraphs, sentences, clauses and phrases of this ordinance are severable and, if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional or invalid by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have been enacted by the Town council without the incorporation of any such unconstitutional phrase, clause, sentence, paragraph or section.

SECTION 5. All ordinances and parts thereof in conflict herewith are hereby expressly repealed insofar as they conflict herewith.

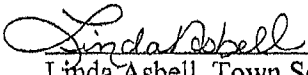
SECTION 6. Effective Date. This ordinance shall take effect immediately from and after its adoption and it is accordingly so ordained

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF LAKEWOOD VILLAGE, TEXAS, on this 19th day of JANUARY, 2012.


Mike Schnittker, Mayor
Town of Lakewood Village



ATTEST


Linda Asbell, Town Secretary
Town of Lakewood Village



January 20, 2012

The Terrill Firm, PC
Paul Terrill
810 West 10th Street
Austin, TX 78701
USPS Certified: 7006 2150 0004 2023 7872

Aqua Texas
Robert L. Laughman
1106 Clayton Lane, Suite 400W
Austin, TX 78723
USPS Certified: 7006 2150 0004 2023 7889

Dear Sirs;

The Town of Lakewood Village received your filing for a tariff increase for water rates charged to Aqua Texas Customers in our jurisdiction. Enclosed please find one certified copy of Ordinance 12-02. The Lakewood Village Town Council unanimously passed this ordinance on January 19, 2012. The enclosed ordinance suspends the new rates for 90 days beyond what would have been the effective date of the new rates.

Thank you for your attention to this matter. If you have any questions regarding this action, please contact me at 972-294-5555.

Sincerely,

A handwritten signature in cursive script that reads "Linda Asbell".

Linda Asbell
Town Secretary

Linda Asbell, Town Secretary
linda@lakewoodvillagetx.us
100 Highridge Drive, Lakewood Village, Texas 75068
972-294-5555, 972-292-0812 fax
www.lakewoodvillagetx.us



TOWN OF LAKEWOOD VILLAGE

ORDINANCE NO. 12-05

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LAKEWOOD VILLAGE, TEXAS DENYING THE REQUEST OF MONARCH UTILITIES I, L.P. FOR A CHANGE TO ITS WATER RATES/TARIFF WITHIN THE TOWN LIMITS OF THE TOWN OF LAKEWOOD VILLAGE, TEXAS; MAINTAINING CURRENT RATES IN EFFECT; CONTAINING FINDINGS AND OTHER PROVISIONS RELATING TO THE FOREGOING SUBJECT; PROVIDING FOR SEVERABILITY; REPEALING CONFLICTING ORDINANCES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on December, 22, 2011, Aqua Texas, Inc ("Applicant") filed a Water Rate/Tariff and Application for Authority to Change Rates ("New Rates") within the town limits and ETJ of Lakewood Village, Texas ("Town") seeking water rate increases;

WHEREAS, the New Rates would affect rates, operations or services of Applicant for retail customers within the Town and ETJ;

WHEREAS, the Town, as a local regulatory authority, exercises original jurisdiction over the rates, operations, and services of Applicant for customers located within the corporate limits of the Town pursuant to the Texas Water Code ("Code");

WHEREAS, Code § 13.082 requires a local regulatory authority to make a reasonable determination of rate base, expenses, investment, and rate of return, and to retain the necessary personnel to determine reasonable rates;

WHEREAS, Code § 13.187 provides that the New Rates take effect on the 61st day after the local filing, unless the local regulatory suspends the effective date of the New Rates;

WHEREAS, the Town Council has determined that it is in the best interests of the Applicant's rate payers to deny the New Rates as the New Rates would adversely impact the ratepayers within the Town.;

WHEREAS, the Town Council has made the rate determination within 90 days from the proposed effective dates of the New Rates.

NOW THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF LAKEWOOD VILLAGE, TEXAS:

SECTION 1. The recitals contained in the preamble of this ordinance are determined to be true and correct and are hereby adopted as a part of this ordinance.

SECTION 2. The Town Council hereby finds that the New Rates requested by Applicant are unreasonable and inconsistent with state law and is therefore in all respects denied. The Town Council hereby orders that the rates in effect prior to the filing of the application of the New Rates shall remain in full force and effect.

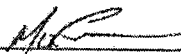
SECTION 3. The Town Secretary shall give notice of this Ordinance to the Applicant by mail.

SECTION 4. It is hereby declared that the sections, paragraphs, sentences, clauses and phrases of this ordinance are severable and, if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional or invalid by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have been enacted by the town council without the incorporation of any such unconstitutional phrase, clause, sentence, paragraph or section.

SECTION 5. All ordinances and parts thereof in conflict herewith are hereby expressly repealed insofar as they conflict herewith.

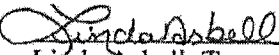
SECTION 6. This ordinance shall take effect immediately from and after its adoption and it is accordingly so ordained

**DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF
THE TOWN OF LAKEWOOD VILLAGE, TEXAS, on this 12th day of
APRIL, 2012.**



Mike Schnittker, Mayor
Town of Lakewood Village

ATTEST



Linda Asbell, Town Secretary
Town of Lakewood Village

